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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)	MM DOCKET NO. 92-253
)	
BAKCOR BROADCASTING, INC., Debtor)	File No. BRH-900330VV
c/o DENNIS ELAM, TRUSTEE)	
)	
For Renewal of License of)	
Station KKIK(FM))	
Lubbock, Texas)	
)	
SOUTHWEST EDUCATIONAL MEDIA)	File No. BPED-900629MK
FOUNDATION OF TEXAS, INC.)	
)	
For Construction Permit for a New)	
FM Station on Channel 229C1)	
Lubbock, Texas)	

Order
Issued: November 24, 1992 ; Released: November 27, 1992

MEMORANDUM OPINION AND ORDER

1. Southwest Educational Media Foundation of Texas, Inc. (SEMFOT) seeks a ruling on a post designation Petition for Leave to Amend. They filed their petition on November 12, 1992, and seek (at this late stage of the proceeding) to substitute an entirely ". . .new corporate entity" for themselves. The new corporate applicant is "Lubbock Educational Broadcasting, Inc.," and would remove SEMFOT's Kent Atkins as a principal. See 57 F.R. 49185 published October 30, 1992.

2. Bakcor Broadcasting, Inc., Debtor c/o Dennis Elam, Trustee (Bakcor) opposed SEMFOT's petition on November 20, 1992. The Mass Media Bureau opposed acceptance of this particular amendment the same day.

Ruling

3. SEMFOT's petition will be denied. It not only has failed to meet the good cause requirements set out in Erwin O'Connor Broadcasting Co. 18 RR 2d 820(1970), it hasn't even attempted to meet those requirements.

4. O'Connor sets out a six-prong good-cause test. Under O'Connor, SEMFOT must demonstrate that it acted with due diligence in submitting a new (and unprocessed) applicant for the original applicant who filed back on June 29, 1990 and whom the Chief, Audio Services Division has processed. SEMFOT doesn't even bother to tell us when the new corporate entity, Lubbock Educational Broadcasting, Inc. came into being or how and when

it assumed control and/or ownership over BPED-900629MK. That is the epitome of the lack of due diligence.

5. Next, under O'Connor SEMFOT must show that their proposed amendment was involuntary; i.e., not caused by any voluntary act on SEMFOT's part. SEMFOT hasn't even tried to make such a showing. Indeed, the converse appears to be true. It appears that SEMFOT waited until it became clear that the Chief, Audio Services Division is concerned about the character qualifications of SEMFOT's President and a Director, T. Kent Atkins. See 57 F.R. 49185 supra. at Footnote 2. Then they voluntarily attempted to substitute a totally new applicant. This forms a separate and independent reason for denying SEMFOT's post designation proffer.

6. Next, under O'Connor SEMFOT must show that no new issues or parties will need to be added or modified if their amendment is accepted. SEMFOT asserts that such will be the case. But they offer no support whatsoever for that barebones assertion. It is sheer sophistry to offer a new and unprocessed corporate entity in a comparative proceeding, and then try to bypass the processing requirements by asserting that they are not needed.

7. The Mass Media Bureau agrees. They say that it doesn't suffice to simply substitute names on an application by way of an amendment. The Bureau points out that SEMFOT's proffer doesn't provide the information required by FCC Form 340, Section II, Legal Qualifications. Thus we lack a description of Lubbock Educational Broadcasting, Inc., data regarding their citizenship and statutory requirements, a description of the new parties, and their other broadcast interests, if any. Thus SEMFOT cannot say that no new issues or parties will need to be added or modified if their amendment were accepted.

8. Next, under O'Connor, SEMFOT must show that the proceeding will not be disrupted if Lubbock Educational is substituted for it. SEMFOT not only hasn't done so, they have made absolutely no attempt to do so. Certainly if we sent BPED-900629MK back to the processing line so that the Chief, Audio Services Division could ascertain whether Lubbock Educational can substitute for SEMFOT, this proceeding would be both delayed and disrupted.

9. Next, SEMFOT hasn't shown or even tried to show that the other parties (Bakcor and the Bureau) would not be prejudiced if SEMFOT's amendment is accepted. Indeed the converse appears to be true. The Chief, Audio Services has specifically given Bakcor the green light to raise postdesignation requests for issues against this SEMFOT application. See 57 F.R. 49185 supra. at para.6. It would certainly prejudice Bakcor's rights if Lubbock Educational were permitted to bypass those requests.

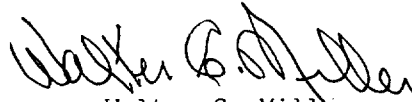
10. Finally, SEMFOT claims that it will not seek nor obtain any comparative advantage from the information provided by the amendment. But the matter is not quite that simple. Lubbock Educational cannot derive any comparative advantage if its amendment were granted. But they must also be charged with any postdesignation deterioration. See WTAR Radio-TV Corporation et.al., 48 FCC 2d 1147 (1974). Since SEMFOT hasn't supplied the required

information, it is impossible to compare SEMFOT's T. Kent Atkins' comparative attributes with Lubbock Educational's Don R. Workman.

11. In summary, SEMFOT's postdesigantion amendment request is a simple case of too-little, too-late. They have failed to meet even one of O'Connor's six good cause criteria.¹² Consequently their proposed amendment must be rejected.

SO the Petition for leave to Amend that Southwest Educational Media Foundation of Texas filed on November 12, 1992, which would substitute a new corporate applicant for themselves IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Walter C. Miller
Administrative Law Judge

¹ SEMFOT filed another Petition for Leave to Amend on November 12, 1992. Strangely enough, in that Petition SEMFOT not only cited the O'Conner ruling, they also referred specifically to the tests set out there.

² SEMFOT has had since June 29, 1990, to firm up its application. It is inappropriate to allow the Commission to expend time and resources processing that application, and then after it is designated for hearing to substitute an unprocessed applicant.